

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

VITAMIN RESEARCH PRODUCTS, INC.,
Debtor.

Case No. 91-56061-MM
Chapter 11

DURK PEARSON and SANDY SHAW,
Plaintiffs,

Adversary No. 92-5343

vs.

MOTION FOR CONTEMPT

VITAMIN RESEARCH PRODUCTS, INC.,
Defendant.

FACTS

This Court signed a Temporary Restraining Order in this case on June 26, 1992 restraining the Debtor from manufacturing any of the Plaintiffs' formulations, from transferring such formulations after July 15, 1992, and from selling such formulations through July 15, 1992 without effective products liability insurance coverage. The Plaintiffs have moved this Court to find the Debtor in contempt for violating the TRO by continuing to sell the Plaintiffs' formulations, by continuing to manufacture the formulations, and for the failure to furnish Plaintiffs with adequate proof of products liability coverage.

DISCUSSION

Civil contempt orders serve to compel obedience to a court order and to compensate parties for losses resulting from non-compliance with a court order. In re Haddad, 68 Bankr. 944, 952 (Bankr. D.Mass. 1987). Determining if a party has committed civil contempt involves essentially only consideration of whether the party knew about a lawful order and whether he complied with it. In re Walters, 868 F.2d 665, 670 (4th Cir. 1989). It is a serious sanction that should be exercised only in the most egregious of circumstances and then primarily for the purpose of controlling cases and proceedings, and the behavior of parties before the court. In re Smith and Son Septic and Sanitation Service, 88 Bankr. 375, 379 (Bankr. D.Utah 1988). The contempt power should not be used when the Bankruptcy Code provides a specific and more adequate remedy. In re Cordova Gonzales, 99 Bankr. 188, 191 (Bankr. D. Puerto Rico 1989).

Whether bankruptcy courts have the authority to exercise the power of contempt is an unsettled question. There is a split of authority addressing this issue.

Upon an initial review, it would appear that In re Sequoia Auto Brokers, Ltd., Inc. (Plastiras v. Idell), 827 F.2d 1281 (9th Cir. 1987) is the controlling authority on this issue in the Ninth Circuit. However, Sequoia has been highly criticized by numerous other courts. See In re Skinner, 917 F.2d 444 (10th Cir. 1990); In re Walters, 869 F.2d 665 (4th Cir. 1989); In re Miller, 81 Bankr. 669 (Bankr. M.D.Fla. 1988).

In Sequoia, the Ninth Circuit Court of Appeals held that bankruptcy courts have neither the inherent authority nor the statutory authority to issue civil contempt orders. First, the Court reasoned that the contempt power is inherent in article III courts and not dependent on congressional authorization. Id. at 1284. However, bankruptcy courts do not derive their authority from article III. Id. Therefore, the Court held that bankruptcy courts do not have the inherent authority to exercise contempt powers. Id.

The Ninth Circuit's second basis for holding that bankruptcy courts do not have contempt powers is that Congress neither expressly nor impliedly conferred such powers upon bankruptcy courts. The Ninth Circuit reviewed the legislative history of the bankruptcy court's contempt powers and determined that Congress expressly granted bankruptcy courts civil and criminal contempt

1 powers under the the Bankruptcy Reform Act of 1978, Pub.L. No. 95-598, 92 Stat. 2549 (codified as
2 amended at 11 U.S.C. and in scattered sections of 28 U.S.C.)[hereinafter the 1978 Act]. Id. at 1287.
3 However, the Supreme Court in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458
4 U.S. 50 (1982), held that Congress' broad jurisdictional grant of power to the bankruptcy courts was
5 unconstitutional. In response to Marathon, Congress amended the 1978 Act, repealing, among other
6 sections, 28 U.S.C. § 1481, upon which bankruptcy courts based their jurisdictional grant of
7 contempt powers. The Ninth Circuit reasoned that "[b]y abrogating these broad grants of express
8 jurisdiction, Congress withdrew its grant of contempt power in the 1978 Act." Sequoia, 827 F.2d at
9 1288. It stated that Bankruptcy Rule 9020 (as it read prior to August 1987), which established
10 procedures for the bankruptcy court to exercise criminal contempt powers pursuant to section 1481,
11 cannot be construed as contempt authority for bankruptcy judges because section 1481 is no longer
12 effective. Id. at 1288-89.

13 The Court further declined to read an implied jurisdictional grant of contempt powers into 28
14 U.S.C. § 157(b)(1), which provides that "[b]ankruptcy judges may hear and determine all cases under
15 title 11 and all core proceedings arising under title 11 or arising in a case under title 11 ... and may
16 enter appropriate orders and judgments, ..." or 11 U.S.C. § 105(a), which provides that "[t]he court
17 may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions
18 of this title."

19 The other line of authority and the majority view is that the bankruptcy court's statutory
20 authority to issue contempt orders derives from the plain language of 11 U.S.C. § 105 and 28 U.S.C.
21 § 157. In re Skinner, 917 F.2d at 447; In re Walters, 868 F.2d at 669. The Fourth Circuit and the
22 Tenth Circuit found these sections to be unambiguous. When statutory language is unambiguous, it is
23 controlling. Skinner, 917 F.2d at 447. The second sentence of Section 105(a) provides, "No
24 provision of this title providing for the raising of an issue by a party in interest shall be construed to
25 preclude the court from, sua sponte, taking any action or making any determination necessary or
26 appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11
27 U.S.C. § 105(a).

28 Also, the Ninth Circuit decided Sequoia based upon Bankruptcy Rule 9020 as it read before

1 the 1987 Amendments to the Rules, which became effective on August 1, 1987. Bankruptcy Rule
2 9020, as amended, no longer relies on 28 U.S.C. 1481 and provides that the bankruptcy court may
3 make a determination of contempt after written notice and a hearing. The rule further provides for
4 the opportunity for objection within 10 days pursuant to the procedure set forth in Bankruptcy Rule
5 9033. Among other things, Bankruptcy Rule 9033 provides that an order of contempt issued by a
6 bankruptcy judge shall be subject to de novo review by the district court. Since the district courts
7 retain the power of de novo review of the bankruptcy court's findings of fact and conclusions of law
8 in civil contempt proceedings, the delegation of civil contempt power to the bankruptcy courts does
9 not offend the Constitution. Skinner, 917 F.2d at 450.

10 One California bankruptcy court has addressed the continued viability of Sequoia since the
11 1987 Amendments. In determining whether creditors violated the Section 362 stay and the Section
12 524 post-discharge injunction, the Bankruptcy Court for the Central District of California
13 acknowledged the validity of the bankruptcy court's contempt power if exercised in compliance with
14 the amended Rule 9020, which provides for the district court's oversight of the bankruptcy court's
15 issuance of contempt orders. In re Wagner, 87 Bankr. 612, 616-17 (Bankr. C.D.Cal. 1988).

16 I am persuaded by the weight of the authority that this Court has jurisdiction to hear contempt
17 proceedings. The appropriate remedy for contempt shall be measured by actual damages. See In re
18 Miller, 81 Bankr. at 679. The Plaintiffs have (failed to) establish the actual damages they have
19 suffered as a result of the Debtor's violation of the Temporary Restraining Order. As the evidence
20 (does not) supports the Plaintiffs' entitlement to relief, this matter is continued to an evidentiary
21 hearing on damages, in addition to costs for bringing this proceeding.
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